



SUPPORT

Consumer Credit Fairness Act

February 11, 2013
A2678-Weinstein
S2454-Savino

MFY Legal Services, Inc. (MFY) envisions a society in which no one is denied justice because he or she cannot afford an attorney. To make this vision a reality, for 50 years MFY has provided free legal assistance to residents of New York City on a wide range of civil legal issues, prioritizing services to vulnerable and under-served populations, while simultaneously working to end the root causes of inequities through impact litigation, law reform and policy advocacy. We provide advice and representation to more than 8,000 New Yorkers each year. Specifically, MFY'S Consumer Rights Project provides advice, counsel, and representation to low-income New Yorkers on a range of consumer problems. MFY, a member of New Yorkers for Responsible Lending, strongly supports A2678/ S2454, because it would help alleviate the established problem of abusive debt collection lawsuits, which have become an epidemic in New York State. During the past decade, hundreds of thousands of debt collection lawsuits have been filed against low- and moderate-income New Yorkers. Most of these lawsuits are brought by third-party debt buyers, companies that buy portfolios of old, defaulted debts from original creditors for pennies on the dollar.

These debt collection lawsuits are abusive for numerous reasons. Many of the debts are in fact too old to be sued on, have already been paid or discharged in bankruptcy, result from identity theft or mistaken identity, or arise as a result of economic abuse in the context of domestic abuse. Even in cases where the consumer may owe some money, debt buyers often sue for grossly inflated amounts, padding the debts with unauthorized fees and interest. Most of the time, defendants do not even receive notice that they have been sued. Without notice, they do not appear in court, and debt buyers easily obtain "default" judgments, without having to produce legitimate proof of the debts.

The consequences of these default judgments can be devastating. Debt buyers enforce judgments by freezing people's bank accounts and garnishing their wages, leaving low- and moderate-income New Yorkers and their families unable to pay for their basic needs, including housing, utilities, food or medication. These judgments appear on people's credit reports, making it difficult, if not impossible, for them to find housing, obtain employment, take out a loan, or accumulate any savings. The harm is exacerbated for victims of domestic abuse, who are often desperate to secure employment and housing to avoid having to return to their abusers, and prevents them from maintaining economic self-sufficiency. The consequences of a

judgment are especially noxious when a person has had no prior notice that he or she was being sued.

These abusive lawsuits are particularly egregious given that debt buyers often have little to no documentation about the debts on which they sue. They then engage in rampant robo-signing of fraudulent affidavits, in which they attest to having information that they do not have. Just last month, the Federal Trade Commission released a report¹ on nine of the country's largest debt buyers, all of which file debt collection lawsuits in New York State. The FTC found that these debt buyers received very little documentation about the debts they purchase, and that these debt buyers rarely received any information concerning whether a person had disputed the debt.

A2678/S2454 would prevent debt buyers from continuing to exploit gaps in our state's Civil Practice Law and Rules, while allowing legitimate cases to proceed. By adopting statewide an additional notice provision already in place in New York City, it protects consumers by ensuring a greater level of notice when they are being sued for a debt. By requiring court papers to include more information about the debt sued upon, it helps New York consumers better identify the debt or account on which they are being sued. This is particularly helpful for victims of domestic violence who are often sued on debts they did not voluntarily or knowingly incur.

Finally, reducing the statute of limitations for consumer credit transactions to three years from six, and eliminating the right to collect the debt once the statute of limitations is expired encourages creditors to file claims in a timely manner and better protects low- and moderate-income consumers from the excessive accumulation of interest charges and late fees. This would bring New York in line with applicable statutes of limitation in states where the major credit card issuers do business. In 2010, New York's highest court (*Portfolio Recovery Assoc. v. King*, 14 NY3d 410 (2010)) confirmed that a three-year statute of limitations applies to most of the debt collection lawsuits filed in New York courts, because four of the country's largest credit card issuers – Chase, Bank of America, Discover, and Capital One – are located in states with three-year statutes of limitations. Moreover, a three-year statute of limitations would bring greater fairness and uniformity to the court process. Every year, thousands of New Yorkers are sued on stale claims. Unfortunately, because most people sued have no access to legal counsel, they are unaware that they can raise a statute of limitations defense. A.2678 / S.2454 would promote fairness by providing for a consistent statute of limitations in debt collection lawsuits and would conserve judicial resources by sparing the courts from having to engage in a fact-intensive inquiry in each case to determine the original creditor's home state.

MFY Legal Services supports swift passage of A2678/S2454, which will greatly reduce the number of unfair and abusive debt collection lawsuits, which are particularly harmful to domestic abuse survivors, and disabled, elderly, and low- and moderate-income New Yorkers.

For more information, please contact: Carolyn Coffey at 212-417-3701, ccoffey@mfy.org or Evan Denerstein, edenerstein@mfy.org at 212-417-3760.

¹ Available at <http://www.ftc.gov/os/2013/01/debtbuyingreport.pdf>.